IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 6199 of 2007(K)

PETITIONER:
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1. FR.T.A. JOHN, S/O.ABRAHAM,
PRIEST, AGED 67 YEARS, RESIDING AT
STHUTHIKATTU HOUSE, KUMBHAZHA, PATHANAMTHITTA.

2. GEORGE THOMAS T. @ MOHAN,
S/O.GEORGE, AGED 57, RESIDING AT
THEEKUNNJIYIL HOUSE, KUMBHAZHA,
PATHANAMTHITTA.

BY ADV. SRI.M.NARENDRA KUMAR
SRI.S.MOHANAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
MINISTRY OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE TAHSILDAR (ADDL.), PATHANAMTHITTA.

3. VILLAGE OFFICER, MYLAPRA.

4. PATHANAMTHITTA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.V.PHILIP MATHEW
SRI.V.K.SUNIL
SR.GOVT. PLEADER SRI.K.J.MOHAMMED ANZAR R1 TO R3
ADV.SRI.V.K.SUNIL FOR R4

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/06/2007 ALONG WITH WPC NO. 6730 OF 2007. THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

W.P.(C).NOs. 6199 & 6730 OF 2007

Dated this the 4th day of June, 2007

JUDGMENT

These writ petitions being connected, they are disposed of through this common judgment.

Petitioners in W.P.(C)No.6199/07 are none other than the respondents 8 and 9 in W.P.(C)No.6730/07. They are referred to as the respondents.

2. Petitioner in W.P.(C)No.6730/07 has approached this court seeking a writ of mandamus to take effective steps to remove the encroachment as mentioned in Ext.P6, to maintain and repair the way in the said property and to ensure that the said property is freely available to the petitioner and others for use as a way. Grievance of the petitioner is that Puramboke land which is used by the petitioner along with others for their ingress and egress to their respective houses is encroached by the respondents. The

puramboke land used as a way by the petitioner is a public street defined in Section 2(34) of the Kerala Muncipality Act, 1994. Ext.P6 came to be issued by the Additional Tahsildar directing action to be taken to remove the encroachment committed by the respondents. By Ext.P7 dtd. 17-02-1007 the Village Officer has stated that some time is required. Petitioner thereupon moved a representation before the local authority. Petitioner therefore prays that there may be action taken to remove the encroachment. Respondents challenge Exts.P4, P5, P7 and P7(a) in W.P.(C) No.6199/07. Exts.P4 and P5 are notices issued under Rule 9 of the Land Conservancy Act to remove the encroachment and there is action against the petitioner. Of course, they refer to the pendency of the civil suit filed by them against the petitioner in the other writ petition seeking declaratory rights and injunction. Whatever that be, the contention taken in the said writ petition is essentially two fold. In the first place, the contention is that it is a thodu which vests in the local authority, therefore action impugned being under

the Land Conservancy Act, there is no power with the Tahsildar or the Village Officer to take action under the provisions of the said act. Their further contention is that the authority competent to take action is the Tahasildar and not the Village Officer.

3. In W.P.(C)No.6199/07, Government Pleader takes notice on behalf of respondents 1 to 3. Adv.Sri.V.K.Sunil appears for the fourth respondent (Municipality).

4. A counter affidavit has been filed on behalf of the Deputy Tahasildar in W.P.(C)No.6730/07. Even though notice was not ordered to respondents 1 to 3 earlier, I am of the view that in view of the fact that the matter in issue is concluded by the direct decision of the Division Bench reported in **Vathsan.V. Vs. Government of Kerala and others** (2002(3)ILR Kerala 245), I do not think that it is necessary to give opportunity to file counter affidavit of respondents 1 to 3. The matter is concluded in the sense that, in the first place, there is no dispute between the petitioners in both the writ petitions that the property in dispute is

vested in the local authority. Of course, learned counsel for the petitioner in W.P.(C)No.6730/07 submits that it is vested only for the purpose of management and repair and therefore such vesting would not militate from the authority under the Land Conservancy Act to exercise its powers under the same. I am afraid that this question is no longer res integra and it is covered by the aforesaid decision. Para 16 is the culmination of the discussion of the Division Bench on a similar issue and it is extracted hereunder:

> " Here it must also be noted that prior to the enactment of the Kerala Municipality Act, 1994, by virtue of the provisions of Explanation IV to section 3 of the K.L.C. Act even the land belonging to a Municipal Corporation is deemed to be the property of Government within the meaning of the said section and all public roads and streets vested in local authority for the purpose of this Act shall be deemed to be the property of the Government. However, section 207 of the Kerala Municipality Act, 1994 made a departure from the said position. Section 207 of the Kerala Municipality Act starts

> with a non obstante clause " notwithstanding anything contained n the Kerala Land Conservancy Act, 1957 or in any other law for the time being in force" and says that the lands mentioned therein shall stand transferred to and vested absolutely in the Municipality. Thus in respect of lands belonging to a Municipality the provisions of the K.L.C. Act, 1957 has no application since 30th May 1994, i.e. the date of commencement of the Kerala Municipality Act, 1994 and the procedure provided in the Municipality Act, 1994 has to be applied for eviction of unauthorised encroachment of property vested in the Municipal Corporation."

5. A perusal of the said judgment and the said paragraph would show that after the enactment of section 207 of the Kerala Municipality Act 1994 (in the facts of this case Section 208), there would be no authority with the officers to invoke the Land Conservancy Act. The property being vested in the local authority, the power is vested with the local authority to ensure that encroachments are removed utilising the power vested in it. If that

be so, Exts.P4, P5, P7 and P7(a) in W.P.(C)No.6199/07 are unauthorised and they are to be quashed. I do so. W.P.(C)NO.6199/07 is hence allowed by quashing Exts.P4, P5, P7 and P7(a).

6. Learned counsel for the Local Authority would submit that though petitioner has submitted a petition in the other writ petition in view of the fact that writ petitions are filed immediately thereafter, the local authority had no occasion to apply its mind and take a decision in the matter. He would submit that respondent local authority will take up the matter and take such action as is warranted in the facts and circumstances and in accordance with law. As far as W.P.(C)No.6730/07 is concerned, it is also to be noted that section 67 of the Kerala Municipality Act empowers the Government to interfere in case of any default by the local authority in the performance of its duty. W.P.(C)No.6730/07 is disposed of recording the submission of the learned counsel for the first respondent that appropriate action in accordance with law as it

is warranted in the facts and circumstances of the case will be taken to remove the encroachment on land vested in the first respondent. Learned counsel for the first respondent submits that action will be taken within a period of six weeks from today. Recording this, the writ petition is disposed of.

K.M.JOSEPH
JUDGE

sv.